IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 1178 of 1994
To
SPECIAL CRIMINAL APPLICATION No. 1181 of 1994

For Approval and Signature:

HONOURABLE MR.JUSTICE D.H.WAGHELA Sd/-

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ? **1 to 5 NO**

==========

G.L.REXROTH MANEKLAL IND.LTD. & 6 - Applicant(s)
Versus
STATE OF GUJ & 1 - Respondent(s)

==========

Appearance :
MR KS NANAVATI for Applicant(s) : 1 - 7.NANAVATI ASSOCIATES for Applicant(s) : 1,
MR SS PATEL ADDL PUBLIC PROSECUTOR for Respondent(s) : 1,
MR MANISH R BHATT for Respondent(s) : 2,
MR BB NAIK for Respondent(s) : 2,

==========

CORAM : HONOURABLE MR.JUSTICE D.H.WAGHELA

Date : 19/01/2007

ORAL JUDGMENT:

1. Special Criminal Application No.1178 of 1994 has been preferred by the petitioners for

quashing of complaint in Criminal Case No.382 of 1994 wherein allegations of offences under sections 177, 193, 196, 199 read with sections 109, 34 and 114 of the Indian Penal Code, 1860 (for short "the IPC") are made. The said complaint was filed on 1.7.1994 and learned Magistrate has straightway issued non-bailable warrant against accused Nos.2 to 8 on 1.7.1994 itself.

2. Special Criminal Application No.1179 of 1994 has been preferred by the petitioners for quashing the complaint in Criminal Case No.381 of 1994 wherein allegations of offences under section 276-C (1) and 277 of the Income Tax Act, 1961 (for short "the IT Act") against accused Nos.1 and 2 and sections 276-C (1) and 277 read with section 278-B of the IT Act against accused Nos.2 to 7 for the assessment year 1985-86 are made. The complaint is filed on 1.7.1994 and, on the same date, learned Magistrate has issued non-bailable warrant against accused No.2 to 7.

3. Special Criminal Application No.1180 of 1994 is filed for quashing the complaint in Criminal Case No.383 of 1994 alleging offences under sections 177, 193, 196 and 199 of the IPC against accused Nos.1 and 2 and under sections

177, 193, 196 and 199 read with sections 34, 109 and 114 of the IPC against accused Nos.2 to 7 for the assessment year 1985-86. The factual allegations are same as contained in the complaint of Criminal Case No.381 of 1994 filed under the relevant provisions of the IT Act, which complaint is challenged by way of Special Criminal Application No.1179 of 1994.

4. Special Criminal Application No.1181 of 1994 is filed for quashing the complaint in Criminal Case No.380 of 1994 alleging offences under sections 276-C (1) and 277 of the IT Act against accused Nos.1 and 2 and under sections 276-C (1) and 277 read with section 278-B of the IT Act against accused Nos.2 to 8 for assessment year 1984-85. The factual allegations are same as contained in the complaint of Criminal Case No.382 of 1994 for offences under the IPC, which complaint is challenged by way of Special Criminal Application No.1178 of 1994.

5. Further proceedings of the aforesaid cases have been stayed by the order of interim relief in these petitions. It is stated at the Bar that appeals of the petitioner, arising from the same subject-matter for both the assessment years, are pending before the Commissioner of

Income Tax (Appeals), Ahmedabad and are likely to be heard and disposed in the near future.

6. In these facts, and due to pendency of appeals, the petitioners do not press the prayer of quashing at this stage. In view of the judgment in ***Income Tax Commissioner, Mumbai v. Bhupen Champaklal Dalal reported in AIR 2001 SC 1096,*** it is hereby directed that further proceedings in aforesaid criminal cases shall remain stayed till the appeal proceedings in respect of the same assessment years are finally decided upto the stage of the Income Tax Appellate Tribunal or for two years ending on 31st December, 2008, whichever is earlier. The parties shall have liberty to apply in case of difficulty, as requested by the learned counsel.

7. With the above directions and observation, the petitions are disposed of without expressing any opinion on merits, as suggested by the learned counsel. Rule is made absolute to the aforesaid extent, with no order as to costs.

Sd/-

(D.H.Waghela, J.)

(KMG Thilake)